



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

■ Ellicott City, Maryland 21043 ■

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

March 28, 2016

Attendance:

Board Members: Lynn Moore, Chair
Jamie Brown
Mickey Day
Howie Feaga
Denny Patrick

Public: Mark Burchick, Environmental Systems Analysis, Inc.
Theresa Bethune, Freedom Broadband
Thom Bethune, Freedom Broadband
Michelle Cable, Administrator, Maryland Agricultural Land Preservation Foundation
Lee Fleming, Elm Lee Farm
Stephen Fleming, Elm Lee Farm
Katy Voss, Chanceland Farm
Sam Zantzing, Community Energy Solar, LLC

Staff: Amy Gowan, Deputy Director, Department of Planning and Zoning
Joy Levy, Program Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mitch Ford, Planning Technician, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

1) Minutes from the November 23, 2015

Ms. Moore called for the approval of the November 23, 2015 meeting minutes. Mr. Day moved to approve. Mr. Feaga seconded the motion, which passed unanimously.

2) Minutes from the February 17, 2016

Ms. Moore called for the approval of the February 17, 2016 meeting minutes. Mr. Feaga moved to approve. Mr. Patrick seconded the motion, which passed unanimously.

3) Request for Approval, Wetland Mitigation Easement, Rhodes Property, HO-03-02-PPSD; 55 acres (ALPB)

Ms. Levy read the staff report, stating that Mr. Frank Rhodes is the current owner of the subject property, which was placed in the Agricultural Land Preservation Program (ALPP) on February 12, 2003 by the Talley Family Limited Partnership, LLLP. The request is to create a wetland mitigation easement area, totaling 0.6 acres. The proposal also includes a forest planting of 100 1-inch caliper trees along the eastern boundary of the proposed wetland and an existing summer pasture. Most of the area subject to the request is currently in active cow pasture along a tributary of Cattail Creek in the Patuxent River watershed.

Ms. Levy stated that the property was evaluated by Patriot Land & Wildlife Management and Environmental Systems Analysis, Inc. (ESA) for its suitability for both wetland creation and forest conservation planting. According to Mr. Burchick, at present the site is active cattle pasture, situated on low ground in between Cattail Creek and an emergent wetland. The proposed mitigation plan will create a 0.6 acre wetland cell, directly abutting an existing emergent wetland, and within the cattle pasture. The site has relatively straight boundary lines, so that disturbance to the surrounding pasture is kept at a minimum. The proposed site contains Codorus and Hatboro Silt Loam soils, and has 0 to 3% grade slopes, creating a dipped floodplain. As a result of this topography, the site is very poorly drained, with water observed from 10 inches deep to the surface. Once the forested wetland has been planted, fencing will be constructed to keep livestock out of the new wetland area. Other agricultural best management practices may also be considered, such as stabilizing the soil at the southwest side of the concrete ford stream crossing. Mr. Burchick indicated in the mitigation concept plan that ESA has been coordinating with the Maryland Department of the Environment to ensure that state standards are met for this project prior to construction.

Ms. Levy referred to the Board's Wetland Mitigation policy regarding the creation of wetland areas on land that is encumbered with an ALPP easement, noting the requirement that any proposal be reviewed by the Soil Conservation District (SCD) to make sure that the amount of land suitable for pasture or cropping is kept to a minimum, and is justifiable based on sound management practices. Wes Earp with SCD reviewed the Board's policy and the plan proposed by Mr. Burchick, and has given his approval.

Ms. Levy stated that the Board's Forest Conservation Planting policy allows forest to be created on ALPP encumbered land along stream buffers, wetlands and their buffers and on steep slopes. According to ESA, the planting is to occur within the proposed and existing wetland and associated wetland buffers, so this part of the project would meet the second criteria. ESA has noted that the trees are a voluntary proffer that will serve to provide thermal closure to enhance the water quality of Cattail Creek. This creek is a naturally reproducing trout system, and the planting is an above and beyond measure to fully utilize this mitigation opportunity. ESA stated that although some areas of the planting may also fall within the first criteria due to them being within 100 feet of Cattail Creek, the vast majority of the work will fall under wetland buffers. Steep slopes are not applicable.

Ms. Levy noted that the land owner will receive compensation in exchange for allowing the perpetual 0.6 acre wetland mitigation easement. Mr. Rhodes is willing to sign a "Declaration of Restrictive Covenants" stating that the area in question must remain as a wetland and that this agreement will run with the land, whereby any future owner must abide by and adhere to the restrictions, and allow the created wetland to remain as a natural area, left undisturbed.

Ms. Levy reviewed the supplemental information of the staff report by explaining the map set provided by the Department of Planning and Zoning (DPZ), as well as schematic designs and information provided by ESA. Additional attachments included the Non-Tidal Wetland Mitigation (WM) Policy and the Forest Conservation Planting (FCP) Policy. Ms. Levy called the Board's attention to the elevation drawings provided by ESA that showed the existing and proposed conditions of the site. She noted that the perspective of the elevation view

clearly displayed the proposed changes in regards to the delineation between the current cattle pasture and the proposed wetland and forest planting areas.

Based on the proposal being consistent with the WM and FCP Policies, staff recommended approval of the proposed wetland mitigation easement on the Rhodes property.

Ms. Moore called for questions and discussion.

Ms. Moore asked for clarification on the soil excavation component of the project. Mr. Burchick explained that by reducing the current elevation by six inches, the ground would intersect with the existing groundwater table level of the nearby tributary. Essentially, the excavation would strengthen the annual water budget and sustain the wetland for the long term. Ms. Moore questioned the reasoning for using prime agricultural top soil in the wetland. Mr. Burchick explained that the top soil is important in supporting the success of the wetland over the initial five-year performance maintenance and monitoring period. Furthermore, organic soil is fundamental to the success and vitality of the new wetland vegetation. ESA would like to achieve a level of 5-8% organic soils, which is considered ideal for a wetland ecosystem.

Mr. Feaga asked where the extra soil was going to be placed. Mr. Burchick stated that the excess soil would be used on site to veneer the existing cow pasture to the east of the wetland mitigation area. Mr. Patrick agreed that the pasture to the east of the wetland site would be the best location for the excavated soil.

With no further discussion or questions, Mr. Feaga moved for approval, which was seconded by Mr. Patrick. The motion passed unanimously.

4) Request for Approval, Wireless Broadband System on Existing Silo, Fleming Property, 13-82-06e, 176 acres (APAB)

Ms. Levy read the staff report stating that the property is located on Watersville Road, just south of the Carroll County line. Shirley Fleming is the current owner of the subject property, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) Program on May 20, 1985. The request is to create a wireless broadband antenna apparatus on an existing silo on the property, also known as a “silo mounted access point.” The proposal includes mounting two sector broadband antennas that would support a Backhaul Dish and Omni Unit. The proposed antenna structure will signal the nearby Century Water Tower in Mt. Airy, and strengthen the wireless broadband network of Western Howard County and surrounding areas. The silo structure that is subject to the request would remain operational for agricultural use once the antenna is mounted.

Per the Maryland Agricultural Code, §2-501, the legislative intent of the MALPF is “. . . to preserve agricultural land and woodland in order to: provide sources of agricultural products within the State for the citizens of the State; control the urban expansion which is consuming the agricultural land and woodland of the State; curb the spread of urban blight and deterioration; and protect agricultural land and woodland as open-space land.”

MALPF’s counsel has determined that the MALPF Board has the authority to allow nonfarm commercial uses as long as they have no effect on the property’s open-space land or its ability to produce agricultural products. In previous cases similar to the current request, it has been determined that the commercial use of a silo mounted antenna is permitted as long as it does not violate any of the preservation values described in §2-501. In particular, MALPF should insure that the antennae or equipment does not occupy a farm field or in any way interfere with the agricultural operation of the farm. Since the wireless apparatus will be mounted to an existing silo that will retain its agricultural function, it appears that the proposal will not interfere in any way with the farming operation on the property.

Per Section 128.0.E.4 of the Howard County Zoning Regulations, “Commercial Communications Antennas Attached to Structures,” the proposal on the subject property successfully meets the required zoning standards. In general, the existing silo structure and proposed antenna meet height and coloring requirements, and do not include any lights or signals. Overall, the proposed structure complies with the current Howard County Zoning Regulations for the Rural Conservation Zoning District.

Ms. Levy exhibited the schematic elevation of the proposed silo mounted access point by stating that the proposed site will be on the easternmost silo of the twin silos, adjacent to the existing barn on the property. The existing silo structure stands at 90 feet. Together, the silo and antenna equipment will total 94.56 feet.

Based on the proposal being consistent with the current Howard County Zoning Regulations and the history of approval for similar devices on MALPF properties, staff recommended approval of the proposed wireless broadband antenna on the Fleming property to the State Agricultural Preservation Advisory Board members.

Ms. Moore called for questions and discussion.

Mr. Feaga asked the representatives of Freedom Broadband about site access to the antenna. Ms. Bethune replied by stating that wireless broadband antennas require significantly less maintenance compared to that of a cellular tower. Additionally, Freedom Broadband would be the only party that would require access to the site. At most, a company truck or small work van would need access to the site in such a situation. Mr. Fleming added that the site can be accessed directly from the driveway, and that the road is in good condition.

Mr. Feaga asked about the size of the new service area that would be enhanced by the proposed silo mounted access point. Ms. Bethune explained that the new antenna would take advantage of the line-of-sight to the Century Water Tower in Mount Airy, strengthening the local network. At this time, Freedom Broadband does not know the exact coverage area that the new antenna will service due to the varying factors of radio frequencies and geography.

With no further discussion or questions, Mr. Feaga moved for approval, which was seconded by Mr. Brown. The motion passed unanimously.

5) Election, Chairman and Vice Chairman of the ALPB

Ms. Levy called the Board’s attention to their annual duty of electing a chairman and vice chairman for the 2016 ALPB term. Currently, Lynn Moore serves as Chairman and Ricky Bauer serves as Vice Chairman. None of the appointed members of the Board are set to expire this year.

With no further discussion or questions, Mr. Feaga moved for approval to keep the incumbents, which was seconded by Mr. Day. The motion passed unanimously. Ms. Moore accepted the position of Chairman of the Board for the 2016 term.

Discussion Items

1) Addendum to SB 236: Amendment to *PlanHoward 2030* to Amend the Growth Tiers

Ms. Gowan updated the Board on the revisions made to the proposed Growth Tiers Amendment. In summation, the addendum now states that all MALPF properties will remain in Tier IV. MALPF properties are no longer being designated as Tier III, as outlined in the previous proposal that was presented to the Board at the February meeting. All preserved properties in the Rural Conservation (RC) and Rural Residential (RR) Zoning Districts, and all land that does not have major subdivision potential will be protected under Tier IV. Properties that are

considered to have major subdivision potential are defined as unencumbered and are 21.25 acres or more. The properties of Bon Secours Conference Center in Marriottsville and The Shrine of Saint Anthony in Ellicott City will also be placed in Tier III, although it is not anticipated that they will be developed in the immediate future.

Ms. Gowan noted Exhibit B of the DPZ Technical Staff Report which listed all of the properties that would be impacted by the Tiers change. Specifically, the proposal calls for moving 49 properties from Tier IV to Tier III, yielding a net development potential of 293 units. Ms. Gowan also presented a new map of the proposed Growth Tier structure to the Board. Ms. Gowan informed the Board that the Department will be presenting the proposed amendment to the Planning Board on April 7, 2016.

Ms. Moore called for questions and discussion.

Mr. Feaga questioned the County's ability to make this Growth Tier change on individual parcels, rather than larger areas. Ms. Cable of the Maryland Agricultural Land Preservation Foundation (MALPF) commented that there have been instances where individual parcels are designated differently from their surroundings, despite the legislative intent of developing Growth Tier regions. Ms. Gowan explained that DPZ has been communicating with the Maryland Department of Planning (MDP) in developing the proposed change. If the new Tier structure is officially adopted by the County Council, the MDP Secretary will issue a formal comment on the proposed change. If MDP disagrees with the proposed change, a public hearing will take place on the State's comments.

Ms. Moore commented that she preferred the existing Growth Tier plan. She expressed her desire to minimize the impact of development, and maintain the agricultural dominance in western Howard County. Mr. Patrick added that the County must keep in mind the rights of farmers when contemplating the Growth Tier change. He stated that the recent mulching controversy illustrates how residential neighbors hinder the farmer's ability to use their property as they see fit to stay viable. He added that this is not a new problem, but additional neighbors will make it worse in the future. Mr. Feaga and Ms. Moore agreed that this is a major issue for the farming community.

Ms. Levy pointed to the Design Standards language in Sections 104 and 105 of the Zoning Regulations for the RC and RR Zoning Districts. The text encourages new cluster subdivisions to be designed in such a way that the potential adverse effects on existing farm operations are minimized. Mr. Feaga took issue with the term 'existing', since numerous farms change their operation from time to time. In general, the goal should be to increase flexibility for farmers, rather than for the residents. He closed by stating that this issue has been overlooked by the County for a long time and that it should be addressed.

2) Continued Discussion on ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities

Ms. Gowan updated the Board on the status of the proposed Zoning Regulations Amendment (ZRA) by stating that the current regulations do not allow commercial solar facilities on ALPP properties, but the ZRA would eliminate this restriction, allowing up to 75 acres of panels on encumbered ground. Ms. Gowan announced that the proposed ZRA will be presented to the Planning Board on April 28, 2016. Ms. Gowan reminded everyone that the ZRA was amended from its original form to include review authority by the ALPB.

Mr. Feaga commented that if the ZRA passes, the Board would like to review proposals for new solar operations on ALPP property early on in the approval process. The Board would then be able to provide guidance on the placement of the solar facility directly to the farmer, noting the importance of its impact on the surrounding farmland.

Ms. Gowan spoke in-depth about the anticipated submission procedures. A property owner in the ALPP who wishes to create a solar operation would submit a conditional use petition to DPZ. After Zoning staff reviews the request, it would be sent to the ALPB for evaluation. Using a set of criteria that has yet to be determined, the Board would make a recommendation to DPZ, perhaps about issues such as location and size of the facility. The Board's recommendation would be incorporated into the DPZ staff report, and would carry significant weight. However, the Hearing Authority would have the final say on any requests for commercial solar facilities on ALPP land.

Ms. Cable added that a few years ago, the State passed *HB 861/SB 259: Agricultural Easements – Renewable Energy Generation Facilities* that supported alternative energy on up to five acres of property in the MALPF program. She noted that the state regulations for these uses would be a good resource for the Board to use in developing their own criteria, and that they would be available for public comment by April 1, 2016. Ms. Cable noted that the State's criteria are based on characteristics such as footprint and location of the panels, as well as site access to the generating facility.

Ms. Burgess noted that it would be helpful to know the potential yield that is granted from the amount of acreage used for a solar facility. In regards to the MALPF limitation, Ms. Cable shared that MDA has found that five acres is insufficient for a standalone solar operation. Mr. Zantzinger of Community Energy Solar, LLC agreed with Ms. Cable that five acres does not warrant a worthwhile solar operation. For now and the foreseeable future, a five acre facility generates the equivalent of 1 megawatt. As a result of this minimal production, most solar companies would not invest in constructing such a facility.

Mr. Zantzinger spoke in detail about his industry and the science of solar technology, stating that on average, most companies will construct a solar facility on approximately 10 to 20 acres. The facility size is dependent on a variety of factors including the type of technology being used, the existing electrical infrastructure, and the site itself. He noted that Maryland currently has a market for solar electricity, proving the need for more facilities. Fundamentally, the sustainable nature of solar energy complements the State's goals and mandates for renewable energy.

Ms. Cable commented that the potential loss of the agricultural tax assessment should be considered when constructing commercial solar facilities on active farms. Mr. Brown stated that the balance between agriculture and solar on a property becomes an even greater issue with smaller farms where space is limited.

Ms. O'Brien stated that the Board could provide additional criteria concerning the acreage limitation by establishing a certain percentage of the farm that could be used in tandem with the current 75 acre maximum. Presently, the language does not have a percentage limitation, so in theory, a 75 acre farm could be used to construct a 75 acre solar facility.

Mr. Brown remarked that the proposed 75 acre maximum in the ZRA is excessive, especially given that there are numerous parcels in preservation that are less than 75 acres. Mr. Feaga stated his skepticism that a 75-acre solar farm could be achieved, due to the lack of electrical infrastructure needed to support the generated wattage. Mr. Zantzinger agreed with Mr. Feaga's opinion by stating that it's very challenging for all of the requirements to be met when constructing solar facilities of that size. He reiterated that solar is largely based on the current electrical infrastructure, as well as the energy capacity that can be managed from the output.

Mr. Feaga stated that he supports the farmer having the opportunity to earn additional profit from solar generation, but at the same time he is concerned about too much tillable ground being covered with solar panels. He cited the similarity between constructing solar panels and constructing homes on farms in that both uses reduce agricultural potential. He supported granting the Board more discretion regarding the placement of solar panels, so that the agricultural operation would be the primary consideration.

Ms. Voss of Chanceland Farm noted that she has been considering a solar facility on her property in West Friendship. The proposed site would be a rectangular strip in between a horse track and Interstate 70. Depending on setback restrictions from the highway, the solar facility could be anywhere from 8 to 17 acres on her 191 acre farm. She explained that the solar company would still be interested in constructing the facility on only 8 acres if that were to be the case.

Moving forward, members of the Board still have the option to testify at the Planning Board meeting to voice their concerns about, or support for, the proposal. The Board decided that they will hold off on any policymaking decisions until the passage of the ZRA is resolved.

3) Discussion on Proposed Revisions to Section 15.518 of the Howard County Code

Ms. Gowan updated the Board on the proposed revisions to Section 15.518 of the Howard County Code that provide for the Board's responsibilities. She stated that generally, the Administration and DPZ are very supportive of the Board having a more active role in making recommendations on policy. Ms. Gowan asked the Board to clarify their intent in provision #5, which states: "Serve in an advisory capacity to the Department of Planning and Zoning on agricultural issues, including the evaluation of uses and/or reported violations on farms." She expressed her concern that there wouldn't be support for the Board to be involved with individual zoning cases.

Ms. Moore addressed this question by speaking from her own experiences as Chairman of the Board, and as a representative of the farming community. She referenced a violation hearing she attended where the atmosphere was intimidating and unbalanced from the farmer's perspective. This impression stemmed from the County's lack of familiarity with agricultural practices, and the farmer's lack of understanding of regulatory law. For example, what the County may deem as rubbish on a farm may in fact have utilization to the agricultural operation. Overall, this absence of agricultural background leads to unjust consequences when interpreting zoning violations.

Ms. Gowan noted that when it comes to Zoning Code enforcement, the Department must exercise extreme caution in sharing case information with others. If by chance a Code enforcement case goes to court, anyone who has had involvement in the case may be called in to testify.

Ms. Gowan asked the Board if there is a way that agricultural expertise could remain a component of the evaluation of the violation, but keep it outside the active state of a case. Ms. Moore suggested that the Board could highlight certain codes that could be considered as standard agricultural practices. Ms. Gowan noted that it would be better to interpret common issues in general, rather than individual cases. Ms. Moore agreed that a broader discussion on certain code language would be beneficial for both the farmers and the county.

Mr. Feaga stated that he would like to see the Board's role expand from just serving properties in preservation to the County's farming community in general. The Board could serve as a resource for farmers who have technical questions about their operations. Ms. O'Brien suggested that the word 'practices' be inserted after the word 'issues' in provision #5. This change would broaden the purpose of the Board's advisory capacity and their ability to comment on evolving agricultural practices in the future. The Board and Ms. Gowan agreed that this word change would be constructive. Ms. Burgess added that the Howard County Historic Preservation Commission regularly has residents come in for design advice, and that she could see a similar role being a positive component of the Board's future service.

Mr. Feaga commented on the proposed redaction to provision #7 of Section 15.518 which states, "Solicit donations of funds to be used in this program from all appropriate sources and to solicit donations of easements

on land.” He questioned the possibility of using surplus program funds to help individuals in the agricultural community, such as assisting with legal fees related to agricultural cases. Ms. O’Brien clarified that the money coming from tax sources must be used for its designated public purpose. She cited that a support network similar to the Farm Bureau would be better suited to serve the purpose suggested by Mr. Feaga. Ms. Levy asserted that there is no need for the provision, since the program does not require fundraising, and that it is not a responsibility of the Board.

Having the Board in agreement with the proposed changes to Section 15.518 of the Howard County Code, Ms. Levy concluded that revisions would be made based on the Board’s discussion and would be returned for comment over the next few weeks.

4) Program Updates

Ms. Levy provided an overview of program updates. She presented the Board with a chart and map that featured property acquisitions that have occurred since the current cycle began in 2013. There are currently five properties in the acquisition process. They include one applicant into the ALPP purchased program, three density sending parcels and one applicant into the State program. Since 2013, twelve properties have been settled, totaling 727.21 acres in preservation. Out of the twelve settled properties, eleven are ALPP and one is MALPF. Financially speaking, the total amount of county funds used in these acquisitions was \$26,924,727 out of the available \$55,406,832 in appropriated funds.

The chart also illustrates those properties that have been scored but have not moved forward for various reasons. There are several properties that are non-developable, a handful that are being developed instead of preserved and about 13 that haven’t pursued any option. Ms. Levy concluded by stating that the Program has seen a lot of activity during the past three years since the current cycle opened.

Mr. Feaga moved to adjourn the meeting, which was seconded by Mr. Brown and carried unanimously. The meeting adjourned at 9:43 p.m.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board